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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/786,525	02/25/2004	Allan R. Jones JR.	I-25083	2726
4859	7590	03/21/2005	EXAMINER	
MACMILLAN SOBANSKI & TODD, LLC ONE MARITIME PLAZA FOURTH FLOOR 720 WATER STREET TOLEDO, OH 43604-1619			LEWIS, AARON J	
			ART UNIT	PAPER NUMBER
			3743	

DATE MAILED: 03/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/786,525

Applicant(s)

JONES ET AL.

Examiner

AARON J. LEWIS

Art Unit

3743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 25 February 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 06/28/2004.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-3, 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Genger et al (EP 0 958 841 A2).

As to claim 1, Genger et al. disclose a method for securing a nasal mask to a user's head comprising the steps of: a) releasably connecting an upper portion (34) of said nasal mask to a brow bar (48); b) securing said brow bar to the user's head with an upper strap (42); c) releasably attaching said lower portion of said nasal mask to the user's head with a lower strap (44).

As to claim 2, Genger et al. disclose said brow bar (48) is secured to the user's head with an elastic (see abstract) upper strap (42), and said lower portion of said nasal mask is releasably attached to the user's head with an elastic (see abstract) lower strap (44).

As to claim 3, Genger et al. (figs. 1-3) disclose said lower portion of said nasal mask is releasably attached to the user's head by positioning said lower strap in a recess (see recess beneath head of hook #32 in figs. 1-3 of Genger et al.) in said mask adjacent a lower portion of said mask.

Claim 14 is substantially equivalent in scope to claim 1 and is anticipated by Genger et al. for the reasons set forth above with respect to claim 1.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 4-13, 15-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Genger et al. (EP 0 958 841 A2).

As to claim 4, while Genger et al. may not expressly disclose the sequence of connection between brow bar and upper portion of the mask, it is submitted that since brow bar (48) includes slots through which elastic head strap (42) passes, it would have been obvious to manually manipulate the upper portion (34) of the mask through the elastic strap that passes through the brow bar after the strap and brow bar are donned OR manually manipulate the upper portion (34) of the mask and insert it between the elastic upper strap (42) and brow bar prior to donning both the upper head strap and mask as equivalent methods of securing the mask to a wearer's head because either method of securing the nasal mask to a wearer's head will work as well as the other. Further, applicant has not established any criticality to donning the mask by any particular sequence or procedure.

As to claim 5, Genger et al. disclose said brow bar (48) is secured to the user's head with an elastic (see abstract) upper strap (42), and said lower portion of said nasal mask is releasably attached to the user's head with an elastic (see abstract) lower strap (44).

Art Unit: 3743

As to claim 6, Genger et al. (figs. 1-3) disclose said lower portion of said nasal mask is releasably attached to the user's head by positioning said lower strap in a recess (see recess beneath head of hook #32 in figs. 1-3 of Genger et al.) in said mask adjacent a lower portion of said mask.

As to claim 7, while Genger et al. may not expressly disclose the sequence of connection between brow bar and upper portion of the mask, it is submitted that since brow bar (48) includes slots through which elastic head strap (42) passes, it would have been obvious to manually manipulate the upper portion (34) of the mask through the elastic strap that passes through the brow bar after the strap and brow bar are donned OR manually manipulate the upper portion (34) of the mask and insert it between the elastic upper strap (42) and brow bar prior to donning both the upper head strap and mask as equivalent methods of securing the mask to a wearer's head because either method of securing the nasal mask to a wearer's head will work as well as the other. Further, applicant has not established any criticality to donning the mask by any particular sequence or procedure.

As to claim 8, Genger et al. disclose said brow bar (48) is secured to the user's head with an elastic (see abstract) upper strap (42), and said lower portion of said nasal mask is releasably attached to the user's head with an elastic (see abstract) lower strap (44).

As to claim 9, Genger et al. (figs. 1-3) disclose said lower portion of said nasal mask is releasably attached to the user's head by positioning said lower strap in a recess (see recess beneath head of hook #32 in figs. 1-3 of Genger et al.) in said mask adjacent a lower portion of said mask.

Art Unit: 3743

As to claim 10, Genger et al. as discussed above also teaches a method for securing and for temporarily removing a nasal mask from a user's head. Genger et al. (figs.1-4) illustrate a head strap (46) that includes an elastic upper strap (42) and an elastic lower strap (44). The upper strap is illustrated as being a continuous band encircling a wearer's head and having an attached brow bar (48) whereas the lower strap is illustrated as being made up of two straps having hooks (56,58) located at respective ends, these hooks enabling a wearer to attach the lower strap to recesses on the nasal mask as illustrated in figs.1-3. As to the limitation "...c) temporarily removing said mask by detaching said lower strap from said nasal mask and disconnecting said upper portion of said mask from said brow bar while leaving said brow bar secured to the user's forehead.", it is submitted that one of ordinary skill would recognize that Genger et al. disclose a strap arrangement that is fully capable of permitting detachment of the hooks (56,58) from the studs (32) and disconnection of the upper portion of the mask from the brow bar by manually manipulating the upper portion of the mask from between the elastic upper strap and brow bar while leaving the brow bar secured to a wearer's forehead via the elastic upper strap.

As to claims 11 and 12, while Genger et al. may not expressly disclose the sequence of connection between brow bar and upper portion of the mask, it is submitted that since brow bar (48) includes slots through which elastic head strap (42) passes, it would have been obvious to manually manipulate the upper portion (34) of the mask through the elastic strap that passes through the brow bar after the strap and brow bar are donned OR manually manipulate the upper portion (34) of the mask and insert it between the

Art Unit: 3743

elastic upper strap (42) and brow bar prior to donning both the upper head strap and mask as equivalent methods of securing the mask to a wearer's head because either method of securing the nasal mask to a wearer's head will work as well as the other. Further, applicant has not established any criticality to donning the mask by any particular sequence or procedure.

As to claim 13, Genger et al. (figs.1-3) disclose said lower portion of said nasal mask is releasably attached to the user's head by positioning said lower strap in a recess (see recess beneath head of hook #32 in figs. 1-3 of Genger et al.) in said mask adjacent a lower portion of said mask.

As to claims 15 and 17, while Genger et al. may not expressly disclose the sequence of connection between brow bar and upper portion of the mask, it is submitted that since brow bar (48) includes slots through which elastic head strap (42) passes, it would have been obvious to manually manipulate the upper portion (34) of the mask through the elastic strap that passes through the brow bar after the strap and brow bar are donned OR manually manipulate the upper portion (34) of the mask and insert it between the elastic upper strap (42) and brow bar prior to donning both the upper head strap and mask as equivalent methods of securing the mask to a wearer's head because either method of securing the nasal mask to a wearer's head will work as well as the other. Further, applicant has not established any criticality to donning the mask by any particular sequence or procedure.

As to claims 16 and 18, Genger et al. (figs.1-3) disclose said lower portion of said nasal mask is releasably attached to the user's head by positioning said lower strap in a

Art Unit: 3743

recess (see recess beneath head of hook #32 in figs. 1-3 of Genger et al.) in said mask adjacent a lower portion of said mask.

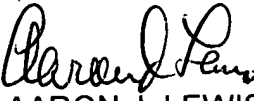
**Conclusion**

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The balance of the art is cited to show relevant methods for securing nasal masks to wearers' heads.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to AARON J. LEWIS whose telephone number is (571) 272-4795. The examiner can normally be reached on 9:30AM-6:00PM M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, HENRY A. BENNETT can be reached on (571) 272-4791. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
AARON J. LEWIS  
Primary Examiner  
Art Unit 3743



Application/Control Number: 10/786,525

Page 8

Art Unit: 3743

Aaron J. Lewis  
March 16, 2005